

EXHIBIT 11

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK
-----X
GEORGE WISHART,

Plaintiff,

vs.

No. 19-cv-6189
(MAT) (MJP)

Correction Officer PETER WELKLEY (in
his individual capacity), Correction
Officer CEDRIK SORIA (in his individual
capacity), Correction Officer JOSEPH
SULLIVAN (in his individual capacity),
Correction Officer W. MARYJANOWSKI (in
his individual capacity), Correction
Officer PAUL PALISTRANT (in his individual
capacity), Correction Officer SWIATOWY
(in his individual capacity), Correction
Officer MITHADRILL (in his individual
capacity), Correction Sgt. JAMES OPPERMAN
(in his individual capacity), Correction
Sgt. EDWARD RICE (in his individual
capacity), and Correction Lt. BRIGHT
(in his individual capacity),

Defendants.

-----X
STATE OF NEW YORK
COURT OF CLAIMS
-----X
GEORGE WISHART,

Claimant,

Claim NO. 129405

-against-

THE STATE OF NEW YORK,

Defendant.

-----X

May 12, 2021
1:34 p.m.

VIDEOCONFERENCE DEPOSITION OF TONY ANGIULO

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo

63

MR. DEUTSCH: You said here's the concept of the conversation and then you said who said that to you. You are just working backwards the same thing.

MR. MOSKOVITZ: Again, there's a transcript of what was said, if this is objectionable. I'll try my best.

Q. Mr. Angiulo, who was the defendant that you needed to contact about the problem with getting access to the cell phone?

MR. DEUTSCH: Again I'm object to go that and instruct him. You're starting by saying here's the content of the conversation you had and then you are working backwards and saying who was it. That's a specific communication.

MR. MOSKOVITZ: If I in any way described the content of the conversation. I asked him who was the defendant he needed to contact about an action, a need to access the phone which he was carrying out pursuant to a

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo 64

court order.

But, all right, if that's your objection, we'll take it up with the judge.

Q. Mr. Angiulo, did you need to contact any of the defendants directly in order though get access to any of their social media accounts?

A. Yes.

Q. Did you have any trouble getting in touch with any of the defendants in terms of getting information that you needed to access any of the social media or email accounts?

A. What do you mean by trouble?

Q. Was there a defendant who didn't return your calls or was there a defendant who you didn't have an accurate phone number for, that kind of thing, did you have any difficulty getting in touch with anyone to get information here?

A. There may have been some that I had to reach out to Hillel and have them contact me or whatever.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo 65

Q. Do you recall which defendant it is you are talking about?

MR. DEUTSCH: Again, objection.

I'm going to instruct him not to answer that.

Q. Was it more than one defendant?

A. Yes.

Q. Was it more than two defendants?

A. I don't think so.

Q. So there were two defendants that you had difficulty getting in touch with?

A. That was good. You figured that out.

Q. I have a minor in math and I'm not being facetious when I say that, actually, a minor in math and computer science. I decided my brain didn't work quite that way. Maybe that was a mistake. Maybe it is.

Was there anywhere that you documented what we were just talking about, difficulty getting in touch with two defendants?

A. I don't believe so, no.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo

69

media in this case?

A. Well, it was after the initial collection. Like I said earlier, I did the social media twice, and after the first time it was brought to my attention that that was not sufficient. So I had to redo it in a different method.

Q. Prior to that did Mr. Deutsch ever ask if you had any experience with what was being asked of you in this case?

A. In relation to the social media?

Q. Right in relation to social media or collection of email or anything like that?

A. Most of the social media, I mentioned that normally that's not how we do this kind of thing.

Q. Were there any times that you were unable to get any information that you needed from one of the defendants in order to access one of their accounts?

A. Yes.

Q. Is that the time that you were trying to access a Twitter account for

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo

70

James Opperman?

A. That was one of them.

Q. There were others?

A. Yes.

Q. How many others that you can recall?

A. At least one other, maybe two.

Q. Can you tell us which those were?

MR. DEUTSCH: I'm going to instruct you not to answer.

Q. Now, how did you try and get access to Mr. Opperman's Twitter account when you couldn't?

A. I put in the ID, user ID and the pass code, and it wouldn't allow me -- it didn't let me in. I don't remember exactly.

Q. Did you contact anyone regarding that?

A. Well, I contacted Hillel and then arranged to have Mr. Opperman assist me.

Q. And did that come to pass that Mr. Opperman assisted you or not?

A. Well, that's when he mentioned

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo

78

if that's helpful?

A. Yeah.

Q. Can you see that on your screen,
the last entry?

A. Yes.

Q. And this is an entry dated June
15, 2020, right?

A. Right.

Q. It's referring to an iPhone 7?

A. Right.

Q. I don't want to mess up reading
your handwriting. Although, it is easy to
read. Well, it's your handwriting and
everyone's handwriting is their own
handwriting. I got my own version.

Would you do me a favor please
and read the notes on that last entry?

A. The date 6/15/2020, my name,
"iPhone 7, no documentation. iPhone 7
received from Michael Swiatowy, screen
damaged when powered up, screen showing
Hello, indicating it was reset."

Q. Okay. When you wrote no
documentation, what did you mean?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo

79

A. There was no consent form.

Q. Why not?

A. You have to ask him.

Q. Did you ask him?

A. No, I did not.

Q. Did you contact Mr. Swiatowy to ask him what happened to that phone?

A. I believe I did.

Q. What did he say?

A. I don't recall.

Q. Do you recall --

A. Actually, I know I notified Hillel but I don't know if I actually spoke to him about the phone. Basically, the day I got the phone and I opened it up, I e-mailed Hillel saying that the phone was damaged.

Q. Okay. And how could you tell that it had been reset?

A. When it powered up, the screen read Hello. And then it would switch to different languages like a phone that's been reset.

Q. Was there anyway for you to tell

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo

80

when it had been reset?

A. No.

Q. Did you attempt to extract data from that phone?

A. No, I did not.

Q. Have you ever plugged a phone that's in that state where it looks like it has been reset into Cellebrite to see what happens?

A. No, I have not.

Q. Okay. I guess it goes without saying from my previous question but did you attempt to plug this phone into Cellebrite?

A. No.

Q. Did you ever come to learn what happened to that phone?

A. You know, the way it came, it was just in a manila envelope without any bubble wrap or any type of protection. So it could have happened in transit, but I don't know.

Q. Did you ever hear that Mr. Swiatowy indicated it was working when he

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo 81

sent it?

A. No. I never -- I don't recall, to be honest. I don't think this was his current phone, though, so he didn't really -- I seem to remember him indicating that it was an old phone and he didn't really care to work because he wasn't using it. I'm not positive if that transpired.

Q. Do you know if any effort was made to activate the phone so it could be accessed to see if there was any residual data on it?

A. No.

Q. Do you know if a phone that's been reset, if it's set up again will still have old data on it before it was reset?

A. I don't believe that there would be any data. I don't believe that data will survive a reset.

Q. Do you know where that phone is now?

A. I sent it back to Mr. Swiatowy.

Q. Okay. Do you have any record of sending that back to Mr. Swiatowy?

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Angiulo 100

document and I'm going to scroll down, it indicates that this was a shipment to Mr. Swiatowy.

Is that what you understand it to be?

A. Yes.

Q. The delivery date is April 27 of 2021. Do you see that?

A. Correct.

Q. That was just a few weeks ago. Do you recall what you were sending to Mr. Swiatowy recently?

A. His phone that was inoperable.

Q. Which one was that?

A. The iPhone 7, I believe.

Q. Okay. So he should have that iPhone 7?

A. Correct.

Q. Is there a reason that you had it for so long?

A. Just, you know, it was just an oversight. He didn't request it back because it was, I don't believe it was his current phone, and I overlooked it.